

Jamie Rucker (JCR 6767)  
National Labor Relations Board  
Region 2  
26 Federal Plaza, Room 3614  
New York, New York 10278  
(212)264-0300

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CELESTE J. MATTINA, Regional Director,  
Region 2, National Labor Relations Board,  
for and on Behalf of the NATIONAL  
LABOR RELATIONS BOARD,

Petitioner,

-against-

08 Civ. 03332

SAIGON GRILL GOURMET RESTAURANT, INC. &  
SAIGON SPICE, INC. d/b/a SAIGON GRILL  
RESTAURANT,

J. Chin

Respondent.

ECF

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AFFIDAVIT

County of New York       )  
                                  ) SS  
State of New York       )

I, Yu Ming Yu, being duly sworn, do hereby affirm as follows:

1. I began working for the Employer as a delivery person in about late February 2006 at the Employer's facility at 620 Amsterdam Ave. I remained employed there until March 3, 2007, when I and all the other delivery persons were fired by Simon Nget and Michelle Nget.
2. Just before I was fired, I worked Monday through Saturday, from 5:00 p.m. to 10:30 p.m. I also sometimes worked Sundays, if the Employer was particularly busy, also from 5:00 p.m. to 10:30

p.m. I was paid \$348.00 per month by the Employer and I earned an additional \$2300 per month in tips, approximately.

3. I returned to work on Monday, March 17, 2008. My work schedule is from 5:30 p.m. to 10:00 p.m., Wednesday through Monday. I am paid \$5.15 per hour.

4. There are about seven other delivery people working for the Restaurant, in addition to me. Those include Li Qiang Lin, Jian Yu Chen, Chen Guo Jin, Su Jie Chen, and Quo Jing Liu. All five of those individuals were working for the Restaurant back in March 2007, when the Employer fired all its delivery workers. However, Su Jie Chen and Quo Jing Liu never joined Local 318 Restaurant Workers Union ("the Union") and neither of those two participated in the wage and hour lawsuit that most of the former delivery workers brought against the Restaurant.

5. The other two delivery employees are new hires. I do not know their names.

6. The two new employees are working more hours than I do each week. They are already at work when I arrive, and a couple of them have told me that they begin work at around noon some days and at 4:00 p.m. on other days.

7. Sue Jie Chen has told me that three days a week he works from 4:00 p.m. to 10:00 p.m. and that on another three days a week he works from 11:30 a.m. to 2:30 p.m. and then from 6:00 p.m. to 10:00 p.m.

8. Quo Jing Liu has told me that he begins work at noon four days a week and at 4:00 p.m. another three days a week and that he works until midnight every day. Although Quo Jing Liu punches out by no later than 10:00 p.m. and sometimes punches out earlier, he continues to work after 10:00. I have seen him still working, taking out deliveries, after I have punched out and am eating my meal or cashing out my tips or just talking to co-workers.

9. Each delivery order is entered into a computer system at the Restaurant. The computer record indicates the address of the customer, what the customer has ordered, the cost of the food ordered, and the time the order was made. Also, each delivery

person is assigned a specific letter to identify him. My letter is "H." When I go to deliver an order, I look at the address the person who took the order has written on the bag. I pull up the order I am going to deliver on the computer system (using that address from the bag) and enter my letter for that order. That identifies me as the person who delivered the specific order. That record does not get immediately printed out on a piece of paper, however, but is simply recorded on the computer.

10. At the end of the day, I receive a computer print-out from the cashier for every order I have delivered that day. The print-out shows the order number, which starts at 5001 each day, the time the order was called in, the time I picked up the order to take it out for delivery, the items sold, and the amounts of the sale and, if it is a credit card sale, the amount of the tip on the credit card. All of the deliveries are divided into either credit card or cash sales. I have to turn in the amount of the cash sales, less any amount of credit card tips listed on the print-out.

I have read this statement of 3 pages, including this one, I fully understand its contents, and I certify that it is true and correct to the best of my knowledge and belief.

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Yu Ming Yu

Sworn to before me at  
26 Federal Plaza, Room 3614  
New York, New York this  
22<sup>nd</sup> day of April 2008

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Jamie Rucker, Board Agent,  
National Labor Relations Board

I am fluent in English and Mandarin Chinese, I have read the foregoing document, and I certify that it is a true and accurate translation of the attached affidavit of Yu Ming Yu, given April 22, 2008.

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Su Yun Chen

## 宣誓书

我，                     发誓并特此确定以下内容：

1. 我是从2006年2月份开始为雇主上班。我是做送餐员在 620 Amsterdam Ave. 我一直在那里上班直到2007年3月3号。当时我是和全部其他的送餐员同时被 Simon Ngat 和 Michelle Ngat 解雇。
2. 在我还没被解雇之前，我是上星期一到星期六，从下午5点到晚上10点半。有时候我~~也~~星期天也上班，如果雇主那天很忙。但工作时间也从下午5点到晚上10点半。雇主付我\$348.00一个月。我大约会赚到小费是在\$230左右。
3. 我是从2008年3月17号，星期一回去上班的。上班的时间是从下午5点半到晚上10点，星期三到星期一。每小时薪水是\$5.15。
4. 那里除了我之外，还有其他7个送餐员在那里上班。那些人包括：Li Qiang Lin, Jian Xu Chen, Chen Guo Jin, Su Jie Chen, 和 Quo Jing Liu。这五个人在2007年3月份的时候~~都在那里上班~~。但是，Su Jie Chen 和 Quo Jing Liu 从来没有参加地方38餐馆员工工会（“工会”）。这两个人也没有跟大多数旧送餐员一起告餐馆关于工资和工作时间问题。
5. 那两个另外的送餐员是新请的。我不知道他们的名字。
6. 那两个新请来的员工<sup>每个星期</sup>上班的时间比我长。当我~~上班~~<sup>上班</sup>的时候，他<sup>们</sup>已经在上班了。还有其中一些告诉我，他们有些天是从~~下午~~<sup>中午</sup>开始，~~第二天~~<sup>第二天</sup>是从下午4点开始。
7. <sup>一个星期中</sup> Chen, Sue Jie 告诉我<sup>4</sup>有三天他是从下午<sup>4</sup>点开始上班到晚上10点，然后其他三天，他是从上午11点半到下午2点半，然后从6点开始到晚上10点。
8. Quo Jing Liu 有告诉我，他一个星期中<sup>4</sup>有4天是从中午12点开始上班，然后其他3天是从下午4点开始。他每天都上班到晚上12点。虽然 Quo Jing Liu 会在晚上10点之前~~打卡~~<sup>打卡</sup>，有时会更早打卡，但是他在晚上10点之后继续上班。我有看到他继续上班，拿单出去送餐是在我打卡之后。有时是在我吃饭，教他总共的小费或者跟同事闲聊。

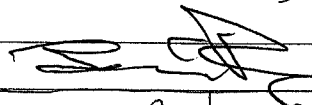
9. <sup>在餐馆里</sup>每一个送餐的单是要打入一个电脑系统的。在电脑里将记入客人的地址，客人点的菜，整个单的总价格和送单的时间。还有，每一个送餐员有指定一个代<sup>①</sup>号来代表他。我的代号是“H”。当我去送餐的时候，我会看<sup>②</sup>接单的外写袋上面的地址。根据袋上面的地址，我把这个单从电脑里面清除，然后在那个单上打入我的代号。那样子就可以指出是我送这个餐。那个记录不会马上从电脑里打印出来，<sup>③</sup>只是记录在电脑里。

10. 每天上班结束的时候，我会从收银员那里收到一张电脑打印出来的单。那单里会显<sup>④</sup>示出当天我送的每一个单。打印出来的单里有定单的号<sup>⑤</sup>码（每一天的号码都是从5001开始），定单的时间，我拿餐去送的时间，<sup>⑥</sup>餐单号，和价格总数。如果这是付信用卡的单，<sup>⑦</sup>小费的数字在信用卡的单上。全部送的单会分为付信用卡或付现金。我要给回除了信用卡上的<sup>⑧</sup>小费的现金销售款。

<sup>⑨</sup>我已读过这份3张的说明书包<sup>⑩</sup>包皮一张。我完全明白这里面的内容，<sup>⑪</sup>根据<sup>⑫</sup>从我所知道的我所信的，我确定这里面的<sup>⑬</sup>内容是真实的。

*Ju. Yling*  
Yu Ming Yu

在我面前发誓是在  
26 Federal Plaza Room 3614  
New York, New York  
在 2008年4月22号

  
Sam Rucker, Board Agent  
National Labor Relations Board